

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
DEC 14 2005
Joseph Haas
CLERK

ROGER HOHN, f/d/b/a SIOUX FALLS
ADVANCED PHYSICAL THERAPY,

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CIV 05-4164

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Plaintiff,

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MEMORANDUM OPINION
AND ORDER

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vs.

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STEPHEN SPURGEON,

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Defendant.

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Defendant filed a Motion to Dismiss, Doc. 5, contending that he was not personally served with the Summons and Complaint as required by Fed.R.Civ.P. 4(e)(2). Subsequent to the filing of Defendant's motion, a Return of Service was filed, Doc. 6, indicating that Defendant was personally served by a private process server. Plaintiff submitted a response to Defendant's motion admitting that the first attempt to serve Defendant was defective. Plaintiff then hired a different process server and asserts that Defendant has now been properly served. The Return of Service appears proper and the record demonstrates that Defendant has now been served in accordance with Rule 4(e)(2). Accordingly,

IT IS ORDERED that Defendant's Motion to Dismiss, Doc. 5, is denied.

Dated this 14 day of December, 2005.

BY THE COURT:

Lawrence L. Piersol
Lawrence L. Piersol
Chief Judge

ATTEST:

JOSEPH HAAS, CLERK.

Jackie Miesenberger
BY: DEPUTY